

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 10.1987 ACRES COMMONLY KNOWN AS NORTH 45 PLAZA AT 10922 NORTH FREWAY, HOUSTON, HARRIS COUNTY, TEXAS; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality ("TCEQ") to create municipal setting designations; and

WHEREAS, on August 22, 2007, by Ordinance No. 2007-959, the City Council adopted Article XIII, of chapter 47, Code of Ordinances, Houston, Texas, to provide a process for establishing municipal setting designation ordinances and amended that process on July 14, 2010, by Ordinance No. 2010-556; and

WHEREAS, Sections 47-765(f) and 47-767(a) of the Code of Ordinances, Houston, Texas, authorize municipal setting designation ordinances that prohibit the use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for designated property; and

WHEREAS, on May 21, 2013, **CCG HOUSTON I, LP**, a Texas limited partnership ("Applicant"), applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for its property that is located generally at North 45 Plaza at 10922 North Freeway, Houston, Texas 77037; and

WHEREAS, on December 3, 2013, the Director of the Public Works and Engineering Department conducted a public meeting at the Shepard-Acres Homes Library, 8501 West Montgomery, Houston, Texas 77088 as required by section 47-764 of the Code of Ordinances, and notified the community when the City Council public hearing would occur; and

WHEREAS, a City Council committee, designated by the Mayor, conducted a public hearing on December 12, 2013; and

WHEREAS, the City Council finds that:

(1) the application meets the eligibility criteria of Section 361.803 of the Texas Health and Safety Code;

(2) the municipal setting designation will not have an adverse effect on the current or future water resource needs or obligations of the City of Houston;

(3) there is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of designated property; and

(4) this Municipal Setting Designation Ordinance is necessary because the concentration of contaminants of concern exceeds human ingestion protective concentration levels, and the establishment of a municipal setting designation will allow the property to be brought back into productive use; and

WHEREAS, City Council finds that the Director of the Public Works and Engineering Department on behalf of City Council, in accordance with the Charter of the City of Houston, state law, and the ordinances of the City of Houston, has given the

required notices, the Technology, Transportation and Infrastructure Committee of City Council has held the required public hearing regarding this Municipal Setting Designation Ordinance and all procedural requirements have been satisfied; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the “designated property” means the tract described in Exhibit A, attached to this Ordinance and incorporated by reference herein.

Section 2. That for purposes of this Municipal Setting Designation Ordinance, “designated groundwater” means groundwater beneath the designated property to a depth not to exceed 200 feet that is prohibited from use as potable water by this Ordinance.

Section 3. That use of the designated groundwater from beneath the designated property as potable water, as that term is defined in section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited.

Section 4. That the designated property must receive a certificate of completion or other analogous documentation issued by the TCEQ or the United States Environmental Protection Agency (“EPA”) showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety Code have been completed to the satisfaction of the TCEQ or EPA within the time period required by them.

Section 5. That the city council supports the application to the TCEQ for a municipal setting designation on the designated property, with the following comment:

(1) The TCEQ and the EPA, as agencies charged to protect human health and the environment, are requested to thoroughly review the conditions on the designated property and issue a certificate of completion only when all contaminants of concern, through the applicable routes of exposure, have been addressed.

Section 6. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations and all ordinances, rules, and regulations of the City of Houston. The City Council's approval of a municipal setting designation ordinance in itself does not change any environmental assessment or cleanup requirements applicable to the designated property.

Section 7. That approval of this Municipal Setting Designation Ordinance shall not be construed to subject the City of Houston to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

Section 8. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Applicant shall provide the director of the Public Works and Engineering Department with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with the City's geographic information system and its integrated land management system, and shall provide an electronic file showing the location of the designated property and the designated groundwater to the Harris County Appraisal District in a format compatible with its system.

Section 9. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Director of the Public Works and Engineering Department shall send a certified copy of this ordinance to the Applicant, to TCEQ and to EPA.

Section 10. That the Applicant shall provide the Director of the Public Works and Engineering Department with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

Section 11. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Public Works and Engineering Department shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

Section 12. That if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 13. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that date and shall take effect

AYE	NO	
✓		MAYOR PARKER
• • • •	• • • •	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		ABSENT ON PERSONAL BUSINESS COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

**METES AND BOUNDS DESCRIPTION
EXHIBIT "A"**

North 45 Plaza

METES AND BOUNDS DESCRIPTION - FIELD DESCRIPTION:

TRACT 1:

A tract of land containing 10.1987 acres of land out of the SIMON CONTRERAS SURVEY, A-220, Harris County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a mag nail with RPLS5735TX tag found in concrete in the Southerly right of way line of Goodson Drive (60 foot right of way) said point being situated South 86°03'16" East a distance of 170.00 feet from the most Northerly corner of a cutback line for the point of intersection of the Southerly right of way line of Goodson Drive with the Easterly right of way line of interstate Highway 45 (North Freeway), a variable width right of way;

THENCE with the Southerly right of way line of Goodson Drive the following:

South 86°03'16" East a distance of 243.48 feet to a ½ inch iron rod with RPLS5735TX cap found for the point of curvature of a curve to the left having a radius of 660.00 feet;

Easterly with said curve to the left through a central angle of 08°24'31" an arc distance of 96.88 feet to a mag nail with RPLS5735TX tag found for corner;

THENCE departing the Southerly right of way line of Goodson Drive, South 03°56'42" West a distance of 1013.95 feet to a ½ inch iron rod with RPLS5735TX cap found for corner in the Northerly right of way line of Dyna Drive (60 foot right of way);

THENCE with the Northerly right of way line of Dyna Drive, North 86°03'16" West to a distance of 340.00 feet to a 1 inch iron pipe found for corner;

THENCE departing the Northerly right of way line of Dyna Drive, North 03°56'44" East a distance of 220.00 feet to a mag nail with RPLS5735TX tag found for corner;

THENCE North 86°03'16" West a distance of 180.00 feet to a ½ inch iron rod found for corner in the Easterly right of way line of Interstate Highway 45;

THENCE with the Easterly right of way line of Interstate Highway 45, North 03°56'44" East a distance of 565.01 feet to a ½ inch iron rod with RPLS5735TX cap found for corner;

THENCE departing the Easterly right of way line of Interstate Highway 45, South 86°03'16" East a distance of 180.00 feet to a ½ inch iron rod found for corner;

THENCE North 03°56'44" East a distance of 221.85 feet to the POINT OF BEGINNING and containing 10.1987 acres (444,256 square feet) of land, more or less, within this description.

TRACT 2:

Easement rights as to Tract ONE described in the certain Reciprocal Easement Agreement dated December 14, 1973, executed by Deauville/Arien Venture I and Jim's Coffee Shop Houston, Inc., recorded under Harris County Clerk's File No.(s) E047518 and E047519.

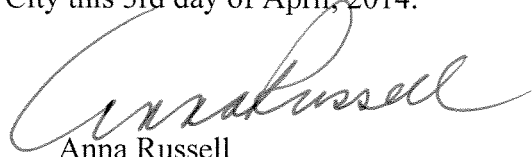
TRACT 3:

Easement rights as to Tract one described in that certain Reciprocal Easement Agreement dated July 7, 1978 executed by Consolidated Capital Realty Investors and Craig H. Christie, Trustee, recorded under Harris County Clerk's File No. F685684.

Said described Tract 1 of land contains an area of 44,255 square feet or 10.1987 acres, more or less.

I, ANNA RUSSELL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy Ordinance No. 2014-159, passed and adopted, by the City Council of said City on 26th day of February, 2014, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 3rd day of April, 2014.

A handwritten signature in cursive script, appearing to read "Anna Russell".

Anna Russell
City Secretary of the City of Houston